

BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

SPENCER MOOERS,

Appellant,

vs.

DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Respondent.

CASE NO. R-RULE-11-001

ORDER OF THE BOARD
FOLLOWING HEARING ON
EXCEPTIONS TO THE
DETERMINATION OF THE DIRECTOR

Hearing on Exceptions. This appeal came before the Personnel Resources Board, DJ MARK, Chair; JOSEPH PINZONE, Vice Chair; and LAURA ANDERSON, Member; for a hearing on Appellant's exceptions to the director's determination dated March 29, 2011. The hearing was held at the office of the Personnel Resources Board in Olympia, Washington, on August 24, 2011. At the close of the hearing, the Board requested an additional document from Respondent. The document was provided to the Board on September 9, 2011.

Appearances. Appellant Spencer Mooers represented himself. Ellen Andrews, Classification and Compensation Administrator, represented Respondent Department of Social and Health Services (DSHS).

Background. By memo dated March 3, 2010, DSHS made a request to Eva Santos, Director of the Department of Personnel (DOP), for an exception to the state's standby pay rate. As stated in the letter, the request was intended to align the standby pay rate for non-represented overtime exempt employees and represented overtime exempt employees, to provide equity in the standby rate throughout the agency, and to seek approval to modify DSHS's compensation policy (Administrative Policy 18.28). DSHS worked with DOP's Compensation Unit to process the request. On June 21, 2010, Director Santos approved DSHS's request, effective July 1, 2010. Director Santos also asked DSHS to "include this policy exception in [DSHS's] salary determination policy . . ." thereby modifying and approving DSHS's compensation policy (salary determination policy).

1 On July 23, 2010, Appellant filed a request for a director's review of alleged rule violations by
2 DSHS with regard to standby pay. By letter dated March 29, 2011, the director's designee denied
3 Appellant's request and determined, in relevant part, that:

4 DSHS followed the steps necessary to request the exception to the state standby
5 pay rate according to WAC 357-28-210. Director Santos approved the exception
6 and asked DSHS to reflect the change in the agency's salary determination policy,
7 consistent with WAC 357-28-030.

8 [See Director's review decision Mooers v. Dept. of Social and Health Services,
9 case number RULE-10-007 (2011).]

10 On April 25, 2011, Appellant filed exceptions to director's determination. Appellant's exceptions
11 are the subject of this proceeding.

12 **Summary of Appellant's Arguments.** Appellant argues that DSHS failed to show a business need
13 for the standby pay exception; that the scope of the exception was too broad and should be specific
14 to a single incident, time limited and necessary to meet a business need; and that Director Santos
15 exceeded her scope of authority in granting the broad exception. Appellant argues that changing the
16 standby rate also changed the way in which standby pay was calculated. Appellant contends that
17 DSHS further violated the rules when it paid some employees the old rate and others the new rate
18 before the new rate was approved by the Director.

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20 **Summary of Respondent's Arguments.** Respondent argues that the exception to the standby rate
21 was requested to align the rates for non-represented positions with the rate for positions covered by
22 the Collective Bargaining Agreement. Respondent explains that the \$25 per day rate was effective
23 for represented employees on July 1, 2009, when the new contract became effective. To provide
24 parity between represented and non-represented employees, Respondent requested an exception to
25 the standby rate found in the state compensation plan. Respondent acknowledges that some
26 appointing authorities within the agency began using the \$25 per day rate before the change was
27 approved by the director. However, Respondent clarified that Appellant's standby pay rate was not
28 impacted until the change was approved. Respondent argues that DSHS followed the appropriate
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1 procedures for requesting an exception to the standby rate and that the exception was approved by
2 the director as required by the civil service rules.

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4 **Primary Issue.** Whether the director's determination denying Appellant's alleged rule violations
5 by DSHS with regard to standby pay should be affirmed.

6 **Decision of the Board.** RCW 41.06.133 gives the director the authority to adopt rules regarding
7 the basis and procedures to follow for the adoption and revision of a state salary schedule. The
8 civil service rules provide further guidance about what must be included the state compensation
9 plan.

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11 WAC 357-28-020 provides, in part:

12 The compensation plan must include:

13 (1) A general salary schedule including minimum and maximum amounts for
14 each salary range assigned to a class;

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16 (3) . . . standby pay rates as determined by the director;

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18 WAC 357-28-015 provides that the director must hold open, public hearings before adopting or
19 revising the compensation plan.

20 WAC 357-28-210 provides, in part, that the director may approve exceptions to standby rates
21 based upon business requirements.

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23 By memo dated March 3, 2010, DSHS requested an exception to the standby rate. DSHS
24 provided a business requirement for the exception. The director approved the exception effective
25 July 1, 2010. These actions were consistent with the civil service rules, specifically WAC 357-
26 28-210.

27 Subsequent to the approval of DSHS's exception to the standby rate, the director held a public
28 meeting during which she revised the state compensation plan by setting the standby rate for
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overtime exempt employees at \$25 per day. This change was effective September 1, 2010. The director's action revising the state compensation plan was consistent with the civil service rules, specifically WAC 357-28-015.

Appellant has failed to show that DSHS or that the director acted contrary to the requirements of the civil service rules.

Further, RCW 41.06.070 (2) and WAC 357-52-010 (2)(b) provide that employees who are adversely affected by a violation of the state civil service law or rules may appeal to the Board. Appellant's standby pay rate was not changed until after the director approved DSHS's request for an exception. Therefore, Appellant has failed to establish that he was adversely affected by a violation of the law or rules.

In an appeal on exceptions, the party filing the appeal has the burden of proof. WAC 357-52-110. Appellant has failed to meet his burden of proof.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Spencer Mooers is denied and the Director's determination dated March 29, 2011, is affirmed.

DATED this ____ day of _____, 2011.

WASHINGTON PERSONNEL RESOURCES BOARD

DJ MARK, Chair

JOE PINZONE, Vice Chair

LAURA ANDERSON, Member